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U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: ATHENS, GREECE

Date: NOV 19 2007

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the United States Citizenship and Immigration Services (USCIS) Field Office Director, Athens, Greece, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Greece who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period in excess of one year. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her U.S. citizen spouse.

The record reflects that the applicant was admitted to the United States in B-2 tourist status on October 4, 2002 and granted a period of authorized stay expiring on April 3, 2003. On October 25, 2002, the applicant married her spouse, [REDACTED], in the United States. The applicant's spouse filed an initial Petition for Alien Relative (Form I-130) naming the applicant as beneficiary on February 24, 2003. The applicant remained in the United States after the period of her authorized stay expired until voluntarily departing for Greece on April 23, 2004. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) with USCIS at the U.S. Embassy in Athens, Greece on or about May 3, 2006. The initial Form I-130 was denied by the Director of the California Service Center on September 1, 2006 on the ground of abandonment. However, the applicant had filed another Form I-130 petition with the Embassy in Athens, a petition that was approved in September 2005.

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of Director*, dated May 18, 2007.

The applicant's Form I-290B, Notice of Appeal, contains the statement of [REDACTED]. The record also contains other statements and letters written by [REDACTED]. On the Form I-290B, [REDACTED] states that she is "just a friend helping—not a lawyer." The record does not contain a Form G-28, Notice of Entry of Appearance as Attorney or Representative, from [REDACTED] and there is insufficient evidence in the record demonstrating that [REDACTED] is a licensed attorney, accredited representative or other individual authorized to undertake representations on the applicant's behalf. *See* 8 C.F.R. § 292.1. Accordingly, the assertions of [REDACTED] will not be considered in this proceeding.<sup>1</sup>

The record contains statements from the applicant and her spouse; a letter from [REDACTED] physician to the applicant's spouse; and medical records for the applicant's spouse. The entire record has been reviewed in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

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<sup>1</sup> Even were the AAO to permit [REDACTED] representation of the applicant, her assertions would have little probative value. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

As stated above, the record reflects that the applicant was admitted to the United States in B-2 tourist status on October 4, 2002 and granted a period of authorized stay expiring on April 3, 2003. The applicant remained in the United States after the period of authorized stay expired until voluntarily departing for Greece on April 23, 2004. The AAO acknowledges that the applicant's spouse filed a Form I-130 naming the applicant as beneficiary on February 24, 2003, but such a filing is not grounds for tolling unlawful presence under the Act. The AAO therefore concurs with the director that the applicant was unlawfully present in the United States for more than one year, departed from the United States, and is now seeking admission within 10 years of the date of her last departure. The applicant is inadmissible under section 212(a)(9)(B)(i)(II).

A waiver of inadmissibility under sections 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen husband is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of* [REDACTED] 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

U. S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under [REDACTED] is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

In his statement, the applicant’s spouse asserts that he suffers from heart disease and is also the only person that can provide his wife with the comfort and companionship she needs after losing both of her parents. He claims that the cost of traveling to see his wife is exorbitant, and that it is a “matter of incomparable significance” to share his “professional matters” and “domestic responsibilities” with his wife. In her statement, the applicant states that due to her husband’s “financial difficulties, professional responsibilities and medical record, it is impossible for him to visit Greece. . . .” [REDACTED] indicates in his letter that the applicant’s spouse has suffered two heart attacks, in 1995 and 2003 respectively, and “requires daily medication and timely monitoring.”

The record, reviewed in its entirety and in light of the [REDACTED] factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if she is refused admission.

The AAO recognizes that the applicant's spouse will continue to suffer emotionally as a result of separation from the applicant if he remains in the United States, but there is insufficient evidence in the record demonstrating that his situation is atypical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation.

The record shows that the applicant's spouse has suffered heart attacks and requires medical care, but the applicant has failed to submit evidence demonstrating that he requires her care for his medical condition, or that her absence causes any additional medical hardship. There is also no evidence, other than the applicant's assertion that her husband has financial difficulties, showing that the applicant's absence causes any financial hardship on her spouse. Although the applicant and her spouse refer to his professional responsibilities, there is no evidence showing the nature of these responsibilities. While the assertions made by the applicant and her spouse are relevant and have been taken into consideration, little weight can be afforded them in the absence of specific supporting evidence. *See Matter of Kwan*, 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant has submitted no evidence showing that her spouse would suffer extreme hardship if he relocated to Greece. The record reflects that the applicant's spouse has resided in Greece in the past. The AAO acknowledges that the applicant's spouse is in poor health, but the applicant has submitted insufficient evidence demonstrating the impact living in Greece would have on her spouse's health and showing that he would experience hardship there.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under sections 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.